



## U.S. MERIT SYSTEMS PROTECTION BOARD

### **Case Report for February 4, 2022**

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### **NONPRECEDENTIAL COURT DECISIONS**

*Edler v. Department of Veterans Affairs*, No. [2021-1694](#) (February 1, 2022) (CH-0714-20-0448-I-1): The court affirmed the administrative judge's decision that upheld the petitioner's removal for misconduct under 38 U.S.C. § 714. The agency removed the petitioner, a Supervisory Housekeeper, based on two charges: (1) "privacy violation," related to his disclosure of his subordinates' medical information to other employees, and (2) "conduct unbecoming a [F]ederal employee," related to comments that he made during a staff meeting regarding potential discipline of a subordinate and suggesting that Somalian refugees were spreading COVID-19 in Michigan. The administrative judge found that both the charges and the penalty were supported by substantial evidence. The court agreed, finding that the facts underlying the privacy violation charge were essentially undisputed. It was not persuaded by the petitioner's argument that the agency was required to prove his bad intent in connection with the privacy violation, observing that "neither the charge label nor the narrative description required the [agency] to prove that [the petitioner's] disclosure was without reason." There was some dispute of fact regarding the conduct unbecoming charge, but the administrative judge's findings were supported by demeanor-based credibility determinations, which the court declined to disturb. The court also agreed with the administrative

judge that the penalty of removal was supported by substantial evidence; the record showed that the deciding official considered the pertinent penalty factors and arrived at a reasonable choice of penalty.

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